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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-00643 DLJ
)	
Plaintiff,)	STIPULATION AND [PROPOSED]
)	PROTECTIVE ORDER REGARDING
v.)	PRODUCTION OF CONFIDENTIAL
)	DISCOVERY
CHARLES A. PHILLIPS,)	
)	
Defendant.)	

Plaintiff, by and through its attorney of record, and defendant, by and through his attorney of record, hereby stipulate as follows:

1. On October 11, 2007, a federal grand jury indicted defendant for distribution of methamphetamine and maintaining a premises for the distribution of methamphetamine in violation of Title 21, United States Code, Sections 841(a)(1), and 856, respectively.

2. The indictment in this case was based in part on evidence provided by a confidential informant. Specifically, the informant purchased methamphetamine from the defendant while wearing a covert audio/video recording device. Defendant has requested information related to the informant. In order to accommodate defendant's request for this information while protecting the safety of the informant, the government believes that the

STIPULATION AND PROTECTIVE ORDER
RE CONFIDENTIAL DISCOVERY

1 proposed protective order is necessary. This protective order will prevent confidential and
2 personal information related to the informant from being disseminated among members of the
3 public, as well as defendant, and his associates or family members. The government believes
4 that the proposed protective order will greatly reduce the possibility that individuals will misuse
5 discovery materials to identify, intimidate, and/or harm the confidential informant and/or the
6 informant's family.

7 3. Defendant and his counsel agree that no inference should be drawn about
8 defendant's dangerousness because of his agreement to enter into this stipulation.

9 4. The parties agree that the following conditions, if ordered by the Court pursuant to
10 Federal Rule of Criminal Procedure 16(d)(1), should serve the government's interest in
11 protecting the confidential informant and other members of the community and reducing the risk
12 of retribution taken against the confidential informant and/or the informant's family by
13 precluding the circulation of the confidential information throughout the community and/or the
14 prison system, while permitting the defense to obtain the information. Accordingly, the parties
15 jointly request that the Court order as follows:

16 a. For purposes of this Order, the term "defense team" refers to: (1) William
17 A. Welch, the counsel of record (including paralegals), for defendant; and (2) defense
18 investigators assisting Mr. Welch with this case. Each member of the defense team must provide
19 the government with a letter indicating that they have read this stipulation and agree to be bound
20 by its terms. For purposes of this Order, the term "defense team" does not include defendant.

21 b. The government is authorized to provide the defense team with
22 discoverable information related to the informant and shall designate such discovery as
23 "Confidential Discovery" to be governed by the terms of this protective order. The government
24 may designate discoverable documents, items, and materials relating to confidential sources or
25 other individuals who would be in danger if their identities were known, by marking such
26 discovery as "CONFIDENTIAL" and shall produce such discovery in a binder marked
27 "WARNING: CONTENTS SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED
28 COPYING OR VIEWING IS SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT."

1 c. The defense team shall not permit anyone, including defendant, to have
2 physical possession of Confidential Discovery pursuant to this Order other than members of the
3 defense team.

4 d. The defense team shall not divulge the contents of any Confidential
5 Discovery provided pursuant to this Order to anyone other than the defendant. The defense team
6 member may show Confidential Discovery to the defendant in the physical presence of a defense
7 team member but may not permit the defendant to have physical possession of the Confidential
8 Discovery.

9 e. The defense team shall not permit Confidential Discovery provided
10 pursuant to this Order to be outside of the defense team's offices, homes, vehicles, or personal
11 presence.

12 f. The defense team shall not reproduce or photocopy the Confidential
13 Discovery unless that copy or reproduction is to be included in a court filing. In the event that
14 one of the parties files a pleading that references or contains Confidential Discovery or
15 information therefrom, that filing must be made under seal. Defendant may not be provided with
16 a copy of such a filing.

17 g. The defense team shall return all Confidential Discovery provided
18 pursuant to this Order to the government no more than fourteen calendar days after the following
19 event: dismissal of all charges against defendant; defendant's acquittal by court or jury;
20 expiration of the time for the filing of a notice of appeal from conviction and/or sentence; or the
21 conclusion of any direct appeal if one is filed, whichever occurs latest in time. In the event that
22 the defense team has made notes or marks on the Confidential Discovery constituting work
23 product the defense team shall return the materials to the government in a sealed container
24 labeled "WORK PRODUCT-DESTROY."

25 h. After the conclusion of proceedings in the district court or any direct
26 appeal in the above-captioned case ("this case"), the government will maintain a copy of all
27 Confidential Discovery produced in this case. The government will maintain such documents
28 until the time period for filing a motion pursuant to 28 U.S.C. § 2255 has expired. After the

1 statutory time period for filing such a motion has expired, the government may destroy the
2 documents.

3 IT IS SO STIPULATED.

4 DATE: April 4, 2008

Respectfully submitted,

5 JOSEPH P. RUSSONIELLO
6 United States Attorney

7 _____ /s/ ¹
8 GARTH HIRE
9 Assistant United States Attorney
10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 _____ /s/
13 WILLIAM A WELCH, ESQ.
14 Counsel for Charles A. Phillips

15 **[PROPOSED] ORDER**

16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby authorized,
17 pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the defense and may
18 designate discovery to be governed by this protective order as Confidential Discovery. The
19 parties are hereby ordered to comply with the conditions set forth in paragraphs 4(a)-(h) of this
20 stipulation and order pursuant to Federal Rule of Criminal Procedure 16(d)(1).

21
22 DATED: _____

23 _____
24 HONORABLE D. LOWELL JENSEN
25 UNITED STATES DISTRICT JUDGE

26
27 _____
28 ¹ I hereby attest that I have on file all the holograph signatures for any signatures indicated
by a "conformed" signature (/s/) within this e-filed document.

STIPULATION AND PROTECTIVE ORDER
RE CONFIDENTIAL DISCOVERY